

COMSAT HISTORY PROJECT

Interview with Lee Loevinger

Interview conducted by Nina Gilden Seavey

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Judge Lee Loevinger
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Nina Gilden: Is it the 17th?

Lee Loevinger: The 18th is correct.

NG: Let's just start out with a brief synopsis of your tenure with, initially, the Justice Department and your involvement with the Satellite Communications Act of 1962.

LL: Well I came into the Justice Department as an Assistant Attorney General to Bobby Kennedy in 1961--which seems an incredibly long time ago to me now. Frankly I find it difficult to believe that it was that long ago. But anyway, shortly after the inauguration, I got a call from John Seagenthaler, who is now an editor in Tennessee, I believe, who was then Bobby's Administrative Assistant asking me to come to Washington to talk to him. I was reluctant to do so, because I was then a member of the Minnesota Supreme Court, happy at the time, but after talking to my friend Hubert Humphrey, he said, "Well, you'd better come down and talk to him." Of course, that is the fatal mistake that you always make when one of

these things occurs. You get down and particularly an Attorney General whose brother is the President, it is difficult to resist. They asked me to come down and be Assistant Attorney General in charge of the Antitrust Division. Sometime during 1961 or 1962 and I can't remember exactly when, they were experimenting with communications satellites. I remember that AT&T had a low orbit satellite, where their system provided for having a series of satellites orbiting the earth, so that only one would be within range for a given period of time; it was a little bit like the sort of thing that is today called cellular radio for communication over the air in large metropolitan areas. You'd have to keep shifting from satellite to satellite. That seemed to me to be quite impractical, actually, and on the few occasions where I had an opportunity to talk to officials of the government and AT&T, I announced that view--which I am sure had no impact--but anyway, eventually they did find that it was impractical and they got into the geosynchronous orbits. But in any event the notion of trans-oceanic communication somehow arose. I simply can't recall the details of where all these things came from and who was involved.

NG: Well, you weren't really involved in the technical aspect, so we don't....

LL: I wasn't involved in it although I was interested in it, but there was a question involving the possibility of monopoly--at that time it was thought to be such an exotic technique--that possibly only AT&T would be capable of it, or something like this and a so-called Cabinet committee was set up. They used to call a lot of things Cabinet committees even when it was Subcabinet officers who were on them and I was on one of these committees to draft a statute for a satellite communications corporation.

NG: Now, when you say you were on this committee, who else served on the committee, do you remember?

LL: Well, I remember representatives from the Department of State and the Department of Commerce. I don't really remember what other groups were represented on the committee. I don't remember whether the FCC was then on the committee or not. I rather think not.

NG: Why would you have thought not?

LL: Well, I don't know. That's just my impression, but again it's pretty vague. I would assume there are records someplace of this sort of thing, I don't know. But the committees met, there were several committees of this sort, actually there was a similar committee with respect to transportation--which never did get anywhere--although some of the ideas that were then being kicked around surfaced years later and some of them, and well, as a matter of fact, I'd say a good many of them, have ultimately become law, although possibly with some modifications. Of course, these things are always modified in the course of legislative enactment. But anyway, that's what happened to the Satellite Act.

NG: Well, now wait. Let's go back and talk about the committee then a little bit. Do you remember what your role on the committee was versus say, the role of the Department of State and Commerce?

LL: Well, once you get on one of these committees, although you have an institutional viewpoint, and my institutional

viewpoint, of course, was that of the Antitrust Division of the Department of Justice and that is that we cannot permit private monopolies where they can be prevented or where they aren't required. On the other hand, at that time it looked like there would be only one satellite communications corporation--certainly only one United States corporation of that kind--and so you struggle with the notion of what are you going to do with it? There were a lot of ideas kicking around, I think that one of the ideas that was seriously considered was that it should be a government corporation, wholly government owned and operated, somewhat like the U.S. Postal Service is today.

NG: Can you remember who the advocates of that were?

LL: No.

NG: Estes Kefauver, maybe?

LL: Well, that was later. We spent a lot of time drafting a proposal, and then it moved to the Congress. By the time it got to the Congress there were strong advocates: Senator Robert

Kerr of Oklahoma was an advocate essentially of turning it over to AT&T and Senator Estes Kefauver was an advocate of government ownership. He was, of course, the strong anti-monopoly champion in the Senate. After the debate had been under way in the Senate for some time, Nick Katzenbach, who was then.... I'm trying to remember whether.... I think Nick was then the Assistant Attorney General in charge of the office of Legal Counsel.

NG: Right.

LL: He became Deputy Attorney General after Byron White was appointed to the Supreme Court, but I believe that was later.

NG: That was later.

LL: Nick Katzenbach was sent down to the Hill to try to reconcile the conflicting views. Actually, within the Justice Department we had a pretty informal liaison. The Assistant Attorney General, and the Attorney General, the Solicitor General talk to each other pretty freely about various matters in which they were interested. In fact, Bobby Kennedy had a

habit of, as I recollect, of having all the Subcabinet executives of the Department of Justice eat lunch with him once a week; He had a private dining room--I guess it was on the fifth floor of the Justice Department. As I recollect, it was not gourmet food, but it probably was a bit better than they served in the cafeteria.

NG: But it was private.

LL: But it was private, which was the big thing. And there would be very informal and frank discussions there. In any event, Nick and I talked about the Satellite Bill. As I recollect, they had come very nearly to an impasse in the Senate and things were pretty bogged down, and the idea occurred to me of having some, but not all, of the directors appointed by the President. And I suggested this to Nick and I believe that that probably, as much as any other single factor, was what kind of broke the deadlock, and that's what finally was enacted into law. I don't take great credit for it. I think Nick did a good job of reconciling the conflicting views, but they did eventually end up with a satellite corporation, in which AT&T held a large share; part of it was owned by the

public and the President appointed a substantial number of the directors, which represented the government interest. So they reconciled all three of the contending viewpoints. As a matter of fact, I think it's still operating that way today.

NG: Now let's go back and then talk a little bit more about this idea of the Presidential Directors. From your point of view, what did these Presidential Directors represent in your mind? What were they supposed to do?

LL: Well, they represented the government's interest, if you like. I am reluctant to use the term public interest, because that is such a vague, undefined term--which is commonly used by zealous partisans at one viewpoint or another to mean whatever they want it to mean.

NG: Touche. What in that sense....did you have something in mind about who these people might be, or what kind of affiliations that they might have with the government?

LL: No, none whatever. Anybody that has in mind the kind of people that the President is going to appoint is out of his

mind unless he happens to be the person delegated by the President to choose the candidates. There is simply no telling who will be appointed and indeed experience, particularly, on the judiciary with which I am most familiar, indicates that Presidents themselves, even when they think they know what kind of a judge they are appointing, are frequently mistaken. The best you can do is to get people who are known to be honest and intelligent and you hope, reasonably informed, or at least willing to become informed and let them use their own judgment.

NG: Because ultimately, Johnson appoints the biggest businessman in the country, the biggest labor leader in the country, and the biggest educator in the country to serve in those positions initially.

LL: Well, that was Johnson's viewpoint and those were good political ploys from the viewpoint of his interest. I am not necessarily an admirer of President Johnson appointees. Was he the one who appointed, I believe it was Welch, who was the former head of Standard Oil of New Jersey?

NG: No, now Welch actually was the Chairman of the Board of

COMSAT. He [Johnson] actually appointed as a Presidential Director, Fred Donner, who had been the Chairman of General Motors.

LL: No, I'd forgotten that. Who appointed Welch?

NG: That was Phil Graham.

LL: Who?

NG: Phillip Graham. Phillip Graham who was the Director of the Board of Incorporators. He was the person who brought on Leo Welch and Joe Charyk. Essentially Phil Graham, obviously there had been consensus as to who that person should be as Chairman of the Board, but essentially it was Phillip Graham.

LL: Of Course, that's part of the sort of myth of Presidential appointees in any event, is that the notion that the President in fact appoints people is largely myth. The number of nominal presidential appointees, as you undoubtedly know, runs into the thousands every year. There is no way, under heaven or earth, that the President can make a personal choice among those. I

was chairman of the American Bar Association section for a year, and matter of fact, well the details of that aren't important, but there were some 50 committee appointments to be made and for a variety of reasons there weren't obvious candidates for many of them. I had to make 50 appointees from among a group of 2,000 or 3,000 lawyers and I almost went out of my mind trying to choose 50 people. I didn't know 50 people qualified for the individual things, and I spent, I think, probably thousands of dollars in long distance telephone calls trying to get 50 people. Well, the President in the first place, doesn't have the time to do this. Indeed, I suspect that I am one of the few presidential appointees aside from Supreme Court Justices who ever actually was chosen by the President personally, which was in fact the case, when I was appointed to the FCC. I am aware of that because the White House staff called me up one day, and I've forgotten who it was, but somebody had asked for my most recent bibliography and other data, and I asked them what was up and they said, "Well I understand the President is going to announce your appointment to the FCC." Nobody around here knew about this before. Bobby Kennedy had talked to me about it, and he and President Kennedy apparently had talked about it, but hadn't informed anybody

else.

NG: Oh, my word.

LL: I didn't know the President that well, but I did know Bobby quite well, and apparently this was something that they had decided when Newton Minow resigned. They wanted somebody to fill in and they picked on me.

NG: Well, let's just then finish up a little bit, before you get onto the FCC, with your involvement in your antitrust concern about the Act as it was going through Congress. I have heard through other interviews and through other things that I've read that you were in fact, opposed to COMSAT--that you felt that this should have been a public corporation in the guise of something like Estes Kefauver had proposed--and that you had been a very outspoken advocate for the idea of not turning it over to AT&T as a monopoly, or actually to this new entity, COMSAT. Is that true or not true?

LL: I don't have any clear recollection of this. I probably testified before Congress 50 or 60 times during the years I was

an Assistant Attorney General, and there were so many of those that I can't recollect. I remember I did testify before Congress on COMSAT half a dozen times at least. One of the things that stands out in my mind... and these are the peculiar little vignettes of recollection that I think probably afflict everybody, except a lot of people mistake them for full recollection. What you really get are little snapshots here and there of things that for one reason or another stick in you memory. We had some extrapolations at that time of the amount of traffic that would be carried by a communications satellite. I remember testifying--and I can't remember the figure that was used at that time--my recollection is that it was something like \$10 billion worth of traffic per year, within a few years. In any event, some weeks or possibly a couple of months later, somebody discovered that an extra zero had been added in, and I tried to correct it....

NG: Oh, no.

LL: You never do catch up with those things. I mean the original figure was bandied about, and used throughout all the debates and everything else, and it was at least an order of

magnitude off.

NG: So once it was in the system, there was no getting it out.

LL: To begin with, the estimates of course, are inaccurate as the devil; they're just the hypothesizing of economists. Even then, when you make a mistake in your calculations and you get an order of magnitude off, the whole thing really becomes an Alice in Wonderland kind of operation.

NG: Do you really think that had any impact, though? Would that really....

LL: No, not much.

NG: Not really.

LL: No, I don't think that in this case it had much. I think that if it had been a million dollars they would have fought just as bitterly over who should control it. Well, maybe not quite, but it certainly was not the core of the debate or the dispute.

NG: Did you have any contact with AT&T at this time over these issues?

LL: I'm trying to recollect, and I'm not sure. It is possible, but it's not at all clear. I don't think so. After I got on the FCC, I had so much contact with AT&T that it's a little hard for me, looking back now--so much has happened since then--to distinguish the years and remember that in one year I talked to Leo Welch and another year I talked to John Debutts and something else.

NG: Well, what about this idea then, of....How did you view the FCC before you got on it in relationship to the activities that they had, the activity that they had generated around the COMSAT Act, and their position on the development of COMSAT before you got onto the FCC?

LL: That's a little hard to state explicitly in retrospect. Also, and I'm not sure, but I suspect that at time I believed as most antitrusters believed, that really no government agency can very effectively regulate a monopoly and that regulation is something between ineffective and sham. I think that is kind

of the traditional antitrust attitude and I was certainly heart and soul, an antitrust enforcement officer, and to a large extent still am a strong believer in antitrust. It has been one of principal^{1/} interests ever since I started practicing law.

NG: Well, so let's take it from a different point of view. Did you feel at the time that the FCC had been too ready to say, "Give the monopoly to AT&T."

LL: Well, I think I did distrust the FCC. As a matter of fact, if I recollect correctly again, a few years before that there had been several scandals on the FCC. There had been several commissioners, who--and I can't remember whether they were hounded out of office for actual corruption--but they were really a very poor lot to say the least. There isn't any doubt in my mind--I don't think that this is pure the kind of distortion you get from identification--but I think that since then the FCC has improved considerably in quality, both in the quality of the people who have served on the FCC generally and

^{1/} change "principal" to "my principal"

in the quality of its staff and its performance.^{2/} I think that there was considerable reason to distrust the FCC at that time. I'm pretty it was during the Sherman Adams-Eisenhower era that there were a couple of--well, more than a couple of FCC commissioners--who really were very unqualified to say the least.

NG: Political hacks.

LL: Political hacks at best. I was speaking at that time, with that background, and much closer to that. It was fairly recent history then. Up to that time, as I recollect, that Kennedy had had few appointments to the FCC and while everyone anticipated that he would have considerably more, at that time, we all looked forward to a second term. But I'm sure that I distrusted the FCC then.

NG: Well, what about this ultimate compromise? This idea that

^{2/} change to: There isn't any doubt in my mind, I don't think that this is merely the kind of distortion you get from identification with the industry, but I think that since then the FCC has improved considerably in quality; both in the quality of the people who have served on the FCC generally and in the quality of its staff and its performance.

well, you sort of bring up this notion, that the Presidential Directors who have an outside concern. They're not stockholders and they're not competitors, and they're not involved in the circle--so they had more objectivity. But the compromise ultimately comes to the point where the carriers own 50% of the company. They have six board directors, and they essentially are both then the consumers of the service, they're the competitors and then also the decision makers (competitors in the sense of cable versus satellite). Then also they are making decisions for the company on profits and investments and what not. How did you see that working out? Did you think that would work?

LL: I guess I thought that it would leaven the interest of those with proprietary interests, I don't think that anybody really envisions how something like this will work and when they do I would say 99 times out of 100 and maybe more than that they're wrong. I mean these theories about, "We'll set up a mechanism and that mechanism will preserve a certain interest that I am interested in indefinitely through future generations," is completely wrong. As a matter of fact, a friend of mine by the name of Glendon Schubert, who is a

political scientist and has done a lot of studies of the judiciary in action, has written a book on this and has pointed out that at various times the conservatives think of the courts as the defenders of their interests, and then the liberals think of the courts as the defenders of their interests and both are illusions. The courts, from time to time, are first on one side and then on the other. They make decisions....in fact, even today, if you follow the decisions of the Supreme Court through a single term, you will find that some delight the conservatives and others delight the liberals.

NG: Exactly.

LL: And that the notion that you will preserve a specific viewpoint or a particular interest through institutional arrangements, I think is an illusion. Now whether I was as aware of that then as I am now, I don't know. I figure that my 25 years in Washington has been a wonderful post graduate education. I know a lot more about government now than I did in my salad days when I first came to Washington as a real player in 1961. I had been here before, I worked briefly for the old National Labor Relations Board and then for the

Department of Justice in the Antitrust Division, really from 1941 until 1946; although a large part of that time I was gone on military leave for active duty in the Navy. But really, working as a staff lawyer at the level I was then anyway, you don't get much of a view of what's going on, but from '61 on I got a pretty good view of how government operates.

NG: A bird's eye view. But here you are the advocate for making sure that the carriers don't take over this thing, surreptitiously from the back door if you will. Were you content with this arrangement? Did you think that, given the limitations of any mechanism, did you think that this was an adequate compromise, or was this ultimately just a monopoly in a different guise?

LL: I can't recollect what my sentiments were at that time. I suspect that I figured it was the best compromise that could be gotten. I'm sure that that's what Nick Katzenbach thought and I'm sure he told me this, and I had no reason to disagree with him. I do believe that one of the common aphorisms that is correct, is that politics is the art of compromise. Actually,

I'm not so sure that the pure form of government ownership or of wholly laissez-faire private ownership for such an enterprise would have been any better. But then I'm speaking from my present viewpoint and I can't tell you exactly what my sentiments were then.

NG: Sure. Okay.

LL: And very frankly, I doubt very much that most of the people who relate to you what they then thought are speaking in fact accurately. There may be somebody who took a very strong position and wrote something about it which he can now refer to. But in the absence of that, I doubt it. I've done a great deal of writing over the years--I've probably averaged, I think, three or four published articles for the last 30 years, per year--and sometimes when I go back and read some of the things I've written, I'm surprised.

NG: It's ideas of a different genesis, a different duration.

LL: Well, you're speaking in a different milieu. You're speaking in different circumstances. You're speaking on the

basis of different experiences. The intellectual environment changes. The intellectual environment in the political environment and the intellectual discussion about it in Washington have changed drastically in the last five years. From the last Carter year to the present, I think that the discourse, the political dialogue in Washington has changed more radically than it did during the 12 years of Roosevelt.

NG: In a negative or positive sense?

LL: Well, some parts of it are negative, some parts of it are positive. It's just that we're talking about entirely different things today, from an entirely different viewpoint. If you took today's arguments back into the circumstances of five or six years ago and had some of the, let's say, liberal democrats, back in the middle of the Carter regime, talking the way they do today, they would have been drummed out of the party as reactionaries.

NG: Well that would be an anachronistic, is what you're saying.

LL: Well, it would be anachronistic. The thing is that's not quite the word for fast forward.

NG: I guess not.

LL: The situation is entirely different.

NG: Well, I guess my line of questioning on this comes essentially from your testimony and the concerns that I know that you had at that--time obviously from your perspective and that had been agreed to by people in the Justice Department. But these are some of the views that you outlined were your concerns at that particular time.

LL: My testimony, which I assume is available somewhere in printed form, I have not looked at since then, and I can assure you it is vastly more accurate as to what we then thought than anything I tell you today.

NG: There is some desire on the part of any historian to try to get behind the words and motivations or to thoughts or to.... obviously, whenever you do testimony, it's compromised.

It doesn't necessarily reflect your particular point of view, although you articulate that view.

LL: Well, I don't recollect that any of my testimony did not reflect my point of view. In fact, the only thing I recollect that in the point of testimony again, its one of these vignettes that stands out, because it had certain dramatic consequences. I was scheduled to testify before Senator Kefauver, as I recollect on telecommunications--oh, this must have been sometime during 1962. As I remember Ed Murrow was supposed to testify and a couple of other people. Anyway, Ed Murrow didn't show up that day and I was the first witness. There were a lot of newspaper reporters there. I don't think it was Kefauver, but one of his staff people started asking me about AT&T and what we were doing....

NG: Bernie Fensterwald.

LL: Pardon.

NG: Bernie Fensterwald asked you.

LL: Probably was. He asked something about, "Have you thought about breaking up AT&T," or a line of questioning of that sort. I don't remember it precisely, but I remember one question, he said, "Have you thought of requiring them," or have you 'considered' I believe was the word, "requiring them to divest their foreign operations?" And I said, "Yes." Actually, I don't think that any person who occupied the position I then occupied Assistant Attorney General, who had looked at AT&T could have said anything else; because if you're thinking about an organization of that kind, you have to consider every possibility.

NG: Sure, but that doesn't necessarily....

LL: It doesn't mean that it is imminent or anything, but anyway, it didn't go much beyond that. That was picked up and apparently headlined in the Wall Street Journal later. As a matter of fact, I remember that I did get some complaints from AT&T. They claimed I had caused a loss of, as I recollect, it was \$1.5 billion in stock values the next day. Bobby Kennedy was Paris, and we got a wire from Paris, something to the effect of, "What the hell is going on?"

NG: That's a lot of power, to make AT&T lose....

LL: Well, the joke of this is, this is very common. Actually, if you want a good tip on the stock market I'll give it to you. It's related to this incident. Wait until there is some testimony of that kind, or some event on Capitol Hill, related to antitrust. It causes stock precipitously to drop. Buy it immediately and it'll come back.

NG: And it'll go right back up.

LL: Within a week it had more than regained all that it had lost. I mean there was no great loss. It was a paper loss to some people for a few days. But there was that kind of thing. Now the problem was, I guess it was a perfectly honest answer, and it was the only answer, as I say, that I think any intelligent person or any thoroughly competent lawyer in that position could give. But it wasn't a complete answer. In a way I was misrepresented or I misrepresented myself. I can't say which. That kind of thing happens. But aside from that kind of incident, I think that I had a great deal of freedom under the Kennedy Administration. Let me say this, and this is

perfectly sincere: I was not leaned on to take positions I did not believe in. There was at least one case, which was an antitrust case which went to the Supreme Court, in which the staff pushed me pretty hard and I talked to Archie Cox, who was solicitor, and we couldn't reach an agreement. Finally the government brief was filed without any signatures from the Antitrust Division. Archie signed it as Solicitor General, which was proper, which he had the right to do. But when an antitrust case goes to the Supreme Court, almost invariably the Antitrust Division is on the brief along with the Solicitor General; in this case we did not. There was no pressure. I mean Archie and I argued, and we argued across the table on many occasions. I did the same thing with Bobby Kennedy. There was a case I remember, where there was a real issue. We were indicting some corporations and the question was whether or not individual executives of those corporations should be indicted also. I don't think it's appropriate to go into name them or go into the details, but I can remember sitting with him [Kennedy] Usually, these conversations with Cox or with Byron White or with Bobby Kennedy were held after 5:30 or 6:00 at night, when other people had gotten out of the office and we'd sit there arguing well into the evening. But I can

remember spending a long time with Bobby discussing this matter and we finally arrived at an agreement--and it was not dictation. We explored all views and finally said, "Well, ok, this is what seems to be the reasonable thing to do." Like any two people in a common enterprise who get together and say, "Ok, what do we do now? Here is a tough problem, now let's kick it around."

NG: So what you're saying, then, is that the testimony that you would have submitted before Congress and the positions that you would have articulated on the COMSAT Act would most probably have been a good statement of your own personal views, as well as the departmental views.

LL: Yes, at that time. As I say, I don't recollect that I was ever pressured by the Kennedys to do anything or take a position that was inconsistent with my beliefs. As a matter of fact, I doubt that there has been a U.S. administration which in that respect, has been as pure as the Kennedy Administration. I sort of hate to rake this up, but as a matter of public record, we brought an antitrust suit against a corporation in which Ethel Kennedy's relatives were principal

stockholders and officers, while I was Assistant Attorney General, and there wasn't a word out of the Attorney General's office. Now that's fairly unusual.

NG: Sure.

LL: We knew what we were doing, and they knew what we were doing, and nobody said "boo" about it.

NG: More power to 'em.

LL: It was really a very honest administration in that sense, well in every sense, as far as I know.

NG: Well let's move then, on to your tenure at the FCC then. You arrived there and Newton Minow's gone. William Henry takes his place. COMSAT at that point is in its nascent form.

LL: Correct.

NG: You mentioned Leo Welch, obviously you had an opinion of Mr. Welch. You had some dealings with him.

LL: Well, The incident that stands out in my mind with Mr. Welch is when he came in one day for a conference with the FCC and we were telling him some of the views we had as to the requirements that should be imposed on COMSAT and how it should operate. Finally his patience sort of gave out and he kind of exploded and he said, "I've been in business for umpteen years," I've forgotten how many it was, "and I've headed large corporations....", My recollection is that he was the head of Standard Oil in New Jersey.

NG: That's right.

LL: Which is now Exxon, which, I guess, is one of our largest, if not our largest, industrial corporation. And he said, "I've never been treated like this, I have never had this kind of government interference in my business." And there was sort of a silence for a moment. I finally said to him, "Mr. Welch, have you ever been engaged in a government regulated business before?" And he looked sort nonplussed and kind of sheepishly said, "No, I guess not." I said, "Well, that's the difference." As an antitrusteer, I was pretty aware of the difference between government regulated business and one that

was not, and I think the other commissioners were not.

NG: Do you think that COMSAT was over-regulated by the FCC or do you feel that they were under-regulated? How do you think that worked itself out ultimately?

LL: Well, I don't know. I guess it's worked out reasonably well.

NG: Well, it depends on your point of view obviously. I mean, I think there are some people who would suggest that COMSAT has not been able to grow as quickly or provide the kind of return on investment to their stockholders that they might have, had there been less oversight by the Federal Communications Commission. Do you feel that that's an apt statement?

LL: Well, I don't know and I think it is very difficult to say without examining the books more carefully than I have ever done. However, the opposing viewpoint of course, is that COMSAT was put in business by government money to begin with. Government research was given--a great invention and a great monopoly to start with--and that all the stockholders put in

was money to develop this to the point of profit. In those circumstances, the public is entitled to some returns also, which they get by way of lower rates. The matter of rate setting is an extremely difficult and sensitive complex matter. It is not at all clear that at any particular point in the regulatory setting of rates that anybody knows exactly what they are doing or comes out with the right result. There was a major rate case before the FCC while I was on the FCC and I wrote several dissents, both to procedure and to results there; those are in the books too. I can't recite them for you.

NG: On the COMSAT....Are you talking about the COMSAT rate case?

LL: No, I think this was an AT&T rate case.

NG: I see.

LL: But basically, similar principles apply, although I think that there is more of a case to be made for regulating COMSAT than for regulating AT&T.

NG: Because it was developed with government money?

LL: Because it was developed with government money. It was started out as a government endowed being with a government created monopoly. And because it operates largely, if not almost wholly, in an international sphere, where we've got to take account of international interests and other governments.

NG: Well, let's just start out then, a little bit more at the beginning. Here you have a number of commissioners, Robert E. Lee for example, comes to mind, who were very much AT&T proponents, if you will. Here you are, you sit in a very different kind of seat, being more of an antitrust, trust buster if you will. What were some of the dynamics that went on between the commissioners--I should say among the commissioners--on the way that COMSAT should go forward from this nascent being?

LL: I don't know. In all candor, I've got to tell you, I don't remember.

NG: If you don't remember, you don't. That's a legitimate

answer.

LL: I have a pretty clear notion of my own relations with others on the FCC. I went on the FCC with the same impression that perhaps you have of Bob Lee. He was a conservative Republican who got on the FCC by courtesy of the Wisconsin Senator McCarthy. I say that because there was also a McCarthy from Minnesota. At that time, I went on with very low expectations of him. I found Bob Lee to be a very decent guy whose father, as I recollect, was a policeman in Chicago. Bob was very candid about saying that he was then occupying a more important, responsible, and illustrious position than he had ever expected to achieve in life, and he expected to do it as well as he could. He did work hard at it, and he educated himself about a lot of things. He was very conscientious. While I disagreed with Bob from time to time--as I did with each of the other commissioners on many other specific issues--because the FCC has a tremendous number of things, some of them are important, some of them are unimportant. But it has, as I remember, a colossal agenda that it considers on each weekday and grinds through far more rulings than any court would consider, and so there are all sorts of chances for

agreement and disagreement. But on the whole, I got along with Bob Lee very well and found him to be quite reasonable about a lot of things. There were others who I thought nominally were more liberal and better educated, but far less reasonable and far more dogmatic in their approaches.

NG: For example?

LL: Nick Johnson.

NG: Well, he was known as the satellite commissioner.

LL: Yeah, well he was a nut! And he didn't do his homework.

NG: What were some of the controversies that you came to blows with him on as may have related to COMSAT?

LL: I don't remember any as related to COMSAT, I just have these general impressions.

NG: Uh, huh, because he was known as the--or he at least considered himself to be the--person who knew about satellite

communications and was sort of the watchdog to COMSAT.

LL: That's because it was the thing which then took the public fancy and he got more publicity that way. He was the kind of guy who would write a dissent and instead of circulating it to the commissioners, he'd give it to the newspapers and then give it to the other commissioners.

NG: So you know where his priorities are.

LL: You're darn right you know where his priorities were.

NG: Now initially, you know, COMSAT went through it's stock offering, it set up it's headquarters at Tregaron, what were some of the issues that you felt were the most important, that maybe might stand out in your mind still as those things that were brought up, or that took the Commission's immediate attention as related to COMSAT?

LL: Look, you probably know a lot more about this than I do.

NG: I know a lot about this, but I can't tell you what I know

because that would be putting words in your mouth.

LL: The thing is that I'm sure the record is much better than anybody's recollection. Looking back, I'd say that my principle concern was to get an operative system going. It seemed to me that that was obviously the challenge, at least that's as I recollect it. I think everything else was really pretty subsidiary.

NG: Do you recall any discussion on the Commission that would have dissuaded COMSAT from having gone geosynchronous as opposed to random orbit--which was the key issue at the time?

LL: No I don't. I'm sure that by that time, that there were technical data and I'm sure experiments or whatever. I don't recollect the technical development in any great detail. I do remember, because I remember at one time....and of course, President Kennedy was assassinated just after I went on the Commission. Those two events sort of occurred in close succession and changed the whole political atmosphere, my position in Washington and everything else.

NG: Certainly.

LL: I remember being at a party with Lady Bird Johnson and talking about the....this must have been, oh, very late '63 or early '64 because there was still talk about this. She was sort of interested and I was a member of the FCC and I knew her. We were sitting around some sort of an informal gathering and I remember expressing to her the strong view that geosynchronous was the way we had to go and that the other was a diversion and really simply didn't make much sense. It was kind of a Rube Goldberg arrangement. She was very interested. She was really a very polite person, but she seemed to be quite interested in it. Again, I remember that--another vignette if you like--because the idea of talking across a table. My impression is that it was somebody's party and that we were sitting cross-legged on the ground eating hamburgers, or something like this. That could be wrong, but it was a very informal setting and the idea of sitting there in a very informal setting chatting with the President's wife over a matter of some significance is something that sticks in your mind.

NG: And some scientific technicality, too.

LL: Well, I've always been interested in science, as such. I was one of the founders of the American Bar Association Science and Technology section, have been affiliated with it, an officer of it since it was founded ten years ago, and was one of those who helped get it started. I've done a fair amount of writing on the subject of science, particularly the social

impact of science and the relationship between science and the law. It has nothing or very little to do directly with COMSAT, which is your point of interest. But I refer you to publications of the sort which indicate a long-standing and genuine interest in science, which frankly I contrast somewhat with what I believe to have been Nick Johnson's media-oriented interest.

NG: Alright. Fair enough. Your tenure at the FCC ends in what year?

LL: It ended July 30, 1968, voluntarily, because I told the White House six months in advance of that that I did not want, and would not accept reappointment to another term. Hubert Humphrey, who was a close personal friend, was then Vice President....as a matter of fact, Johnson didn't want to stir things up and there was no doubt in my mind whatsoever that I could have had another appointment to what was then a seven year term. I talked to John Macy who was the personnel director at the White House, and told them that they'd better get a successor ready. As a matter of fact, I got a very nice letter from Lyndon Johnson; I think it was the day I left office. There is a copy of it over there on the wall....

NG: Uh, huh.

LL:which you are free to read. But despite this--and this is one of the interesting things about presidential appointments--the day arrived and went, and I stayed in my office there for a week or ten days because there was no other appointee. The other commissioners were willing to let me clean out my files. I took my secretary with me when I left, and we cleaned out files and did a lot of arranging, but I didn't attend meetings. I got no pay from the Commission. I felt it was necessary for me to do that for two reasons a) I had had my complete fill of government bureaucracy.

NG: I'm certain.

LL: I simply wasn't prepared to spend even another year at it. I was aware of the fact that if your term runs out, even if you tell the White House you don't want another appointment, you serve until your successor is appointed and qualified, and innumerable people around Washington have served for sort of vague, indefinite terms [that] can last from a week to a year that way.

NG: Or more.

LL: Or more, and I regard this as intolerable. In any event, my oldest child was about to enter college and I wanted to get out of government service, and I could not honestly and decently conduct negotiations or make arrangements to do that while I was on the government payroll or on the FCC. As a matter of fact, somebody, who was it?....oh, some woman in defense recently got into a little trouble over this. She sent out notices to a bunch of government contractors that she was about to leave, and she would be glad to consider--whatever it was--jobs from them after she got out of her job. Well, this is a very difficult thing, without going into the details. Anyway I did--the last week I was in office and after excusing myself from official duties in effect--talk to several law firms and the first of, July I had an arrangement with this law firm to become part of it.

NG: Now, just prior to your leaving, however, ITT begins to divest itself of an enormous amount of COMSAT stock; I think it was 1,050,000 shares or something. It was, at that time, that some concern had been raised and was not a private concern among the people at COMSAT, that this relationship between the carriers and the company itself might not necessarily be as

auspicious as one might have initially thought. Ted Westfall, who at that time was the ITT Director--or one of the two ITT Directors--had been fairly outspoken in his views on where ITT's interests really should lie. Do you recall anything around the time of your departure about this beginning of the movement which ultimately ended up with the domestic systems being set up and AT&T, ITT, and all the rest of the carriers divesting themselves of COMSAT stock?

LL: I don't recall that at all.

NG: Do you think that COMSAT had been, during your tenure at the FCC, an effective lobbyist in front of the Commission? Could they have done a better job?

LL: That's hard to say, I suppose anybody can always do a better job in retrospect.

NG: But at the time, did you feel that they were well prepared? Did you feel that they--especially say in some of their disputes with AT&T over satellite/cable ratios, that kind of thing--had been as forceful as they might have been?

LL: I don't have any recollection of feeling that they were inadequate in their presentations. We got a lot more presentations from AT&T than from anybody else, for obvious reasons. In fact, my impression at that time was that AT&T had one vice president for every commissioner. I had a very charming guy by the name of Ed Crosland. I guess actually he did in fact talk to other commissioners, but Ed was a thoroughly charming, urbane, intelligent guy. I'd talk to him often and he'd talk to me often, and as I say, my impression was that AT&T had made him Vice President, and assigned him to lobby me personally.

NG: Vice President in charge of Lee Loevinger.

LL: Which I am sure was untrue. But I criticized AT&T presentations. They used to give these little shows for the FCC and they'd say, "Now this is the way this circuit works." Then they'd have these little diagramatic things--they were artistically beautifully done, you know--but they'd show something that looked like a little pipe, which represented a wire, and then a bunch of little balls, running along it that represented messages and that sort of thing....

NG: Right. Little kindergarten.

LL: I'm sure I told Ed and other ITT^{3/} officials....and as I say, I considered myself moderately sophisticated about scientific matters, this has been an interest of mine ever since I got out of college. I had a science major as an undergraduate in the arts college....and I said, "Look, this stuff is just simple minded. This is okay for grade school kids, but for heaven's sakes don't come in and ask me to spend my time looking at it. I just think this is very ineffective." I guess it was effective with some of the commissioners. Apparently they did [find it effective]. As far as I can tell, my expostulation had no effect on them whatsoever. My recollection is that I was annoyed at some of the AT&T presentations, but I don't remember any such feelings about COMSAT. I guess that they were about what you would expect and as far as I know they were competent.

NG: Well, let me ask you one last question that comes to my mind, which is it is around this time that the issue of domestic systems does come up. COMSAT makes the argument--and

3/ change "ITT" to "AT&T"

I'm sure that you must have had some thoughts about this, being involved in the development of the Satellite Act, and being an antitrust advocate--that because they had had the monopoly on international systems and they had been granted that monopoly by Congress, that there was some kind of a transverse relationship and that they then should be allowed to have the monopoly over domestic systems. The issue of domestic systems really did become quite a hot topic and specifically, more after you left than while you were there. Do you remember any of the germs of that discussion or any of the thoughts that you might have had on the way that domestic systems should have developed?

LL: No. I honestly don't remember. Again, in answering any questions about this, it's only fair to disclose in the first place, I've been with Hogan and Hartson since July 1968, which is a lot longer than I served on the FCC; It's a long time, its much more recent, and much more vivid. During that period, the firm as a firm, and I personally, have done work for various communications entities. As a matter of fact, I think we still represent RCA, the RCA subsidiary that has satellites (American Communications I believe it's called). I think this would not

prevent me from giving you my candid opinion, but certainly under the current mores, a failure to disclose this would impeach anything I said. No, I have no feeling that there should not be domestic competitors in this field as there are indeed. We have domestic competition in this field. After looking at what my successors in the Antitrust Division did to AT&T, it would be anomalous indeed, to establish a new monopoly domestically for satellite communications. It would be the height of absurdity. AT&T was an effective--and everyone admits--an extremely efficient operating system that was thoroughly integrated locally and long distance. It was broken up by Bill Baxter, for a variety of reasons. I happen to think that was a mistake.

NG: A lot of people would agree with you.

LL: I could expatiate on that at some length.

NG: I'm certain.

LL: But to say that we should now attempt to establish a new kind of monopoly that is not demanded by either the technology

or the economics in satellite communications for domestic communications, to my mind borders on the absurd.

NG: Well, what about now, and this is taking this up to today. Now, in this era of deregulation and what not, increased competition, now they're talking about competitors in the international field to COMSAT and by definition to INTELSAT. Do you think that this goes against the original charter and the original guarantee that was given to COMSAT?

LL: I think it's probably inconsistent with the original conception that we had, but then we had no idea of the development that would occur. I'm not sure what it is in monetary terms. It is possible by this time that they have caught up with my error in original financial calculations. I haven't seen the figures. Of course that was 25 years ago and that's a long time in technology in these days. I think there is going to be communication [SIC][competition] in international satellite communication, whether we like it or not. We might as well make the transition to reasonable competition an orderly and sensible one.

NG: Do you think that knowing what you do about COMSAT--and obviously you haven't been involved with the company for quite some time--do you think it is going to be an effective competitor?

LL: Sure.

NG: Why is that?

LL: For one thing it's got a great big head start.

NG: Okay.

LL: Those things are hard to overcome.

NG: A lot of barriers to entry in that field.

LL: Obviously. Saying that the technology does not make it inherently monopolistic is true, but it isn't the whole story, either. The number of usable geosynchronous spaces is limited. I suppose theoretically you could string almost an unlimited number of wires around a city or across a country. As a

practical matter you can't and our local telephone companies are still monopoly operations. But you can't put an unlimited number of geosynchronous satellites up there without having intolerable interference. In fact, they've just concluded, I believe, what is called WARC, (World Administrative Radio Conference) in Geneva, in which they have been attempting to allocate spaces for satellites on an international basis. Those are difficult things. I was on a U.S. Delegation to an ITU conference on the allocation of radio frequencies--which essentially is the same thing, it's just a little different part of the spectrum--and it's extremely difficult. The smaller, less developed countries--kind of as a matter of national pride if nothing else--want allocations, even though in many cases they can't use them. There are the usual conflicts between Russia and its satellites [nations] and the United States and its friends. So there is fierce competition for these things, even beyond the immediate requirements for the functional purposes; but that's simply got to be worked out. If we took an adamant position that there should be no competition permitted, it seems to me this would probably have very undesirable international consequences, quite apart from the technical problems. So I think that the position has got

to be a flexible negotiating one, which I understand the American position, in fact, is.

What particular balance ought to be the result of those negotiations, I don't think anybody on the outside is competent to make a judgement. You've got to be in the middle of the things and even when you're in the middle of them, by the time you finally do reach a consensus--or at least something that the group will agree on--you're never entirely sure that you're right. I distrust people who are absolutely certain that the conclusion that they have arrived at is the correct and the only correct answer to a particular problem:

NG: It's too self possessed.

LL: Anybody who is that self-righteous and that self confident is almost certain to be wrong and probably dangerous.

NG: Are there any comments or any thoughts or any things that you feel I have missed in our discussion that you would like to bring up now, or that you feel have been omitted in some way--some points?

LL: You haven't omitted much.

NG: I hope not.

LL: As I say, obviously you know a great deal about it and all I can say is that the written record is much more reliable and probably much more accurate than the oral recounting you get from people and while I say I don't remember probably more frequently than a lot of others, it is perhaps because my undergraduate major was psychology and I am very conscious of the fallibility of human memory. Your own memory tricks you so much. There are things that you would like to remember, and therefore you do remember.

NG: As if they happened.

LL: As if they happened. This is very easy to happen. It happens to children all the time and apparently judging on the public record, it seems to happen fairly frequently to politicians.

NG: That's exactly what I was going to say.